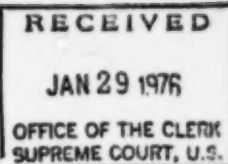


No. 75-5831



IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1975

ARNOLD EUGENE WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,  
Solicitor General,  
Department of Justice,  
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES

Petitioner contends that he was denied the right to a speedy trial in violation of the Sixth Amendment by the delay between the filing of a motion to revoke his probation and the probation revocation hearing.

On June 18, 1973, petitioner was convicted in the United States District Court for the Southern District of Texas of possessing a controlled substance (robitussin) with intent to distribute, in violation of 21 U.S.C. 841(a)(1). He was sentenced to three years' imprisonment, three months of which were to be served in confinement, and the balance suspended in favor of probation. He was also sentenced to two years' special parole.

Upon completing his term of imprisonment, petitioner was placed under the supervision of the probation service of the

United States District Court for the Western District of Texas (Tr. 145-146). On December 27, 1973, petitioner was arrested by state police in Houston, Texas (within the Southern District of Texas) and was charged with three armed robberies (Tr. 146-147).

On January 21, 1974, a motion to revoke petitioner's probation was filed in the United States District Court for the Southern District of Texas, to which supervision of petitioner's probation had been transferred after his arrest. On February 5, 1974, that court issued a warrant for petitioner's arrest for violation of the terms of his probation. Execution of the warrant was delayed pending resolution of the state criminal proceedings.<sup>1/</sup>

Petitioner was acquitted on one of the state armed robbery charges, and another charge was dismissed; however, on March 28, 1974, petitioner was convicted on the third armed robbery count. On March 12, 1975, after petitioner became entitled to be released from state custody, the probation violator's warrant was executed, and on the following day a preliminary hearing was held on the motion to revoke probation. On April 16, 1975, petitioner filed a motion to dismiss, contending that he had been denied the right to a speedy revocation

<sup>1/</sup> Memorandum and Order at 1, attached hereto as Appendix A.

hearing. The district court denied relief, and the probation revocation hearing was held on April 25, 1975, approximately 15 months after the filing of the motion.

Petitioner contends that this delay violated his Sixth Amendment right to a speedy trial. But parole and probation revocation proceedings are not "criminal" cases, and the Sixth Amendment, by its terms, is inapplicable. See Gagnon v. Scarpelli, 411 U.S. 778, 781; Morrissey v. Brewer, 408 U.S. 471, 480. Petitioner therefore is entitled to relief only if the delay deprived him of his Fifth Amendment right to due process of law.

The Due Process Clause applies only when an individual is deprived of "liberty" or "property." In this case petitioner was not deprived of his liberty by the United States until the warrant was executed on March 12, 1975. A preliminary hearing followed immediately, and the final revocation hearing took place on April 25, well within the outer limits set by the Due Process Clause. Petitioner has not demonstrated any prejudice caused by the delay; revocation of his probation was supported by his state conviction (which cannot be relitigated in the probation revocation proceedings) and by the undisputed fact that he left the Western District of Texas without permission.

We acknowledge, however, that this case appears to present as to probation revocation the same constitutional issues that are presented as to parole revocation by Moody v. Daggett, No. 74-6632, Gaddy v. Michael, No. 75-5215, and Orr v. Levi, No. 75-5594, in which petitions for writs of certiorari are

presently pending. We have acquiesced in the granting of those petitions so that this Court may resolve the conflict among the circuits regarding the manner in which parole may be revoked when the parolee has been convicted of a crime committed while on parole and the proper remedy when parole has not been revoked with sufficient dispatch.<sup>2/</sup> If those petitions are denied, then the instant petition ought also to be denied since it raises no different constitutional issues. If those petitions are granted, however, then we suggest that this case should be held and disposed of in accordance with those decisions.

Respectfully submitted.

ROBERT H. BORK,  
Solicitor General.

JANUARY 1976.

<sup>2/</sup> We are serving a copy of our responses in those cases upon counsel for petitioner. The office of Legislative Affairs informs us that it expects that during March, 1976 the Conference Committee will report on the legislation referred to therein.

APPENDIX

April 30, 1975

MEMORANDUM AND ORDER:

On Motion to Revoke Probation

The above named defendant was convicted in this court in June, 1973, of the possession with the intent to distribute a large quantity of Robitussin, a controlled substance. He was sentenced to three years confinement, three months of which was to be served, the remaining 33 months to be probated with supervision. After serving his three months, defendant took residence in San Antonio, Texas (within the Western District) where he had previously resided and was under supervision of the Probation Service of that court.

On December 27, 1973, the defendant was arrested in Houston, Texas by State officers; and in due course thereafter was indicted in three cases of armed robbery.

Thereafter defendant's probationary supervision was returned to this District and motion to revoke the probation was filed. As the defendant was in custody and unable to post bond in the three State proceedings, the revocation hearing was delayed to await the outcome of the State charges. Recently, however, following conviction in one of the State cases, petitioner has taken an appeal, and has posted bond and thus would be entitled to release from custody save for the probation violator's warrant issued by this court. Thus I have felt it advisable to set for hearing the motion to revoke. Such hearing was held April 25, 1975. In effect, this was simply a retrial of the State court conviction.

Defendant was arrested by Houston, Texas, police on December 27, 1973, while riding with one Rosalie Bell



in an automobile owned by her. This vehicle had been identified by witnesses as one used by the robber in escaping following the robbery of a "Jack-in-the-Box" about 8:45 p.m. on December 21, 1973. By reason of his relation with the owner of the vehicle, defendant was viewed in a series of line-ups by a number of victims of other recent robberies.

He was identified and later charged as the armed robber of the Dutch Mill Cleaners, which robbery took place about 8:10 a.m. on December 19, 1973; with the robbery of the Jack-in-the-Box on December 21, 1973; and with being one of the several armed men who robbed the executive offices of the Lucky Seven Stores about 3:30 p.m. December 26, 1975[sic].

The defendant was brought to trial for the Dutch Mill Cleaners robbery. This resulted in an acquittal. There was a single employee-witness within the establishment which was victimized; and while her identification was positive and clear, business records showed the defendant was employed in San Antonio at the time of the robbery.

With respect to the Jack-in-the-Box offense, this charge was dismissed at a preliminary hearing. This is understandable in that the only witness who undertook to identify the defendant was a then fourteen year old employee whose identification was tenuous and uncertain at best.

With respect to the Lucky Seven robbery of December 26, however, the story is quite different. The defendant was identified by three witnesses who had abundant opportunity to observe him, and to listen to him speak during the course of the robbery. Of particular significance is the testimony of one of the witnesses to the

effect that one of the robbers (whom she identified as the defendant) had no teeth. Such is the case with the defendant, as became evident when he took the stand in his own defense at the recent hearing. It was this charge in the State court which resulted in conviction.

It appears, however, that while the defendant gave notice of appeal, he has done nothing to perfect the appeal, the transcript has not been prepared, and the status of the matter is uncertain.

From the evidence adduced on the revocation hearing, I adopt the view of the jury in the State court proceeding. I find the defendant has violated his probation (a) in participating in the robbery of December 26, 1973, and (b) in leaving the Western District of Texas without permission of his probation officer.

The suspension of the 33 months remaining of the original sentence is set aside and the sentence ordered into execution.

The clerk will file this Memorandum and Order and furnish copies to counsel of record.

Done at Houston, Texas, this 30th day of April, 1975.

/s/ BEN C. CONNALLY  
Ben C. Connally  
Senior United States  
District Judge

Williams testified in his own behalf at the revocation hearing. He denied his guilt of the offenses which underlay the revocation proceedings.

The United States District Court revoked the probation, and this appeal followed.